

REMARKS

In the Office Action, claims 1-23, 31-35, and 40-49 were rejected. By the present Response, claims 15 and 41 are amended. The amendments do not add any new matter and support for the amendments may be found at least in FIG. 2, and paragraphs 30 and 33 of the originally filed specification. Upon entry of the amendments, claims 1-23, 31-35, and 40-49 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are requested.

Petition to Withdraw Finality

The Examiner indicated that the current Office Action has been made final. Applicant submits that the finality of the Office Action is improper based on the use of prior art which is disqualified under § 103(c). In particular, the Examiner rejected claims 12 and 14 under 35 U.S.C. § 103, using Deaven et al., U.S. 2005/0111711 (hereinafter “the Deaven reference”). Applicant respectfully submits that the Deaven reference does not qualify as prior art against the application under 35 U.S.C. § 103(a). More particularly, in accordance with 35 U.S.C. § 103(c) and Pub. L. 106-113, § 4807, enacted November 29, 1999, subject matter which qualifies as prior art only under subsection (e) of 35 U.S.C. § 102, shall not preclude patentability on obviousness grounds where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. At the time the present invention was made, the invention disclosed by this application and the invention disclosed in the Deaven reference were both owned by or under an obligation of assignment to GE Medical Systems Inc. *See* Assignments recorded at reel and frame locations 014752/0201, 016469/0189, and 014755/0552. Further, because the Deaven reference was filed a day prior to the filing of the present application, it is clear that the reference only qualifies as prior art under 35 U.S.C. § 102(e). Thus, in accordance with 35 U.S.C. § 103(c) and M.P.E.P. § 706.02(l)(3), the Deaven reference does not qualify as prior art that may be used in a rejection under 35 U.S.C. § 103(a).

Without the Deaven reference, the Examiner's rejection of claims 12 and 14 under 35 U.S.C. § 103(a) cannot stand. Further, it is clear that none of the art of record available as prior art discloses or suggests all of the elements recited in claims 12 and 14. Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejections and allowance of claims 12 and 14. However, if the Examiner chooses to provide a *new ground* of rejection, Applicant requests that the Examiner provide a sufficient rationale for the rejection, using available prior art, in a future *non-final* Office Action, in accordance with M.P.E.P. 706.07(a).

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 1-23, 31-35, and 40-49 under § 103(a) as being obvious over various pieces of prior art. The prior art utilized in the rejection of independent claims 1, 15, 31, 40, 41, and 42, as well as the prior art used in the rejection of dependent claims 12 and 14, will be outlined below. The Examiner rejected independent claims 15, 31, 40, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga et al., U.S. Patent No. 5,968,132 (hereinafter "the Tokunaga reference") in view of Wood et al., U.S. Patent No. 5,851,186 (hereinafter "the Wood reference"). Final Office Action, page 3. The Examiner rejected independent claims 1 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Huffman, U.S. Publication No. 2004/0005094 (hereinafter "the Huffman reference") in view of Machida, U.S. Patent No. 6,642,943, (hereinafter "the Machida reference") and in further view of the Wood reference. Final Office Action, page 15. Additionally, the Examiner rejected dependent claims 12 and 14 under 35 U.S.C. § 103(a) as being unpatentable over the Huffman reference, as modified by the Machida reference, in further view of the Wood reference, and in further view of the Deaven reference. Final Office Action, page 33.

Applicant respectfully traverses these rejections. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002). Therefore, the Examiner must establish, based on objective evidence of record, reasons supporting a conclusion as to the combinability of the references in making an obviousness rejection.

Omitted Features of Independent Claims 1 and 42

Independent claims 1 and 42 recite, *inter alia*, “a scanner module configured to modify a scanning rate of the image data; and an encoder module configured to modify an encoding format of the image data.” (Emphasis added). The Examiner relied on the Huffman reference to disclose a scanner module and an encoder module, citing paragraphs 8, 20, and 48. Final Office Action, pages 15-16 and 21-22. However, these sections of the Huffman reference disclose only what may be considered an encoder module. The Huffman reference details compression of images, but it fails to disclose a scanner module configured to *modify a scanning rate* of image data, as recited in independent claims 1 and 42. At best Huffman describes generating a set of pixel

coordinates to identify a portion of the source image at a specified resolution for compression. *See* Huffman, paragraph 48, FIG. 4. However, generating pixels at a specified resolution of a single frame is not equivalent to modifying a scanning rate of the image data, as recited in independent claims 1 and 42. Modifying a scanning rate of the image data, for example, includes capturing fewer frames per second. *See* Specification, paragraph 38. Modifying a scanning rate of the image data does not involve modifying the resolution of the captured frames as described in the Huffman reference.

Moreover, the Machida and Wood references do not overcome the deficiencies of the Huffman reference with respect to independent claims 1 and 42. Specifically, the Machida reference is directed to displaying, by means of icons, a plurality of input sources. *See* Machida, Abstract. The Wood reference is directed to an imaging system that is capable of being accessed remotely. *See* Wood, Abstract. However, neither reference discloses a scanner module configured to modify a scanning rate of the image data and an encoder module configured to modify an encoding format of the image data. Thus, the Huffman, Machida, and Wood references, taken alone or in hypothetical combination, fail to disclose all elements of independent claims 1 and 42. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claims 1 and 42, and further requests allowance of independent claims 1 and 42, as well as all claims depending therefrom.

Omitted Features of Independent Claim 15

Amended independent claim 15 recites, *inter alia*, “wherein the serving station utilizes a *remote framebuffer protocol* to transmit the modified image data to the served station.” (Emphasis added). The Examiner relied upon the Tokunaga reference in view of the Wood reference to reject independent claim 15. *See* Final Office Action, page 3. However, neither the Tokunaga reference nor the Wood reference describes a serving station utilizing a remote framebuffer protocol to transmit modified image data to the served station.

The amended language of claim 15 parallels rejected claim 12. The Examiner relied upon the Deaven reference to teach a serving station utilizing a remote framebuffer protocol to transmit modified image data to the served station. However, as discussed above, in accordance with 35 U.S.C. § 103(c) and M.P.E.P. § 706.02(l)(3), the Deaven reference does not qualify as prior art that may be used in a rejection under 35 U.S.C. § 103(a). Therefore, the Deaven reference may not be used to overcome the deficiencies of the Tokunaga reference and the Wood reference with respect to independent claim 15. Thus, the Tokunaga reference and the Wood reference, taken alone or in hypothetical combination, fail to disclose all elements of independent claim 15. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claim 15, and further requests allowance of independent claim 15 as well as all claims depending therefrom.

Omitted Features of Independent Claims 31 and 40

Independent claims 31 and 40 recite, *inter alia*, “comparing the network performance to a specified range.” (Emphasis added). The Examiner relied on the Tokunaga reference to disclose comparing the network performance to a specified range, citing column 22, lines 46-54. Final Office Action, pages 7 and 10. However, this section of the Tokunaga reference discloses only a comparison of current traffic to *an initial traffic value*. The Tokunaga reference does not describe comparing the network performance to a *specified range*.

Moreover, the Wood reference does not overcome the deficiencies of the Tokunaga reference with respect to independent claims 31 and 40. Specifically, the Wood reference is directed to an imaging system that is capable of being accessed remotely. *See* Wood, Abstract. However, the Wood reference fails to disclose comparing the network performance to a specified range. Thus, the Tokunaga and Wood references, taken alone or in hypothetical combination, fail to disclose all elements of independent

claims 31 and 40. Therefore, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claims 31 and 40, and further requests allowance of independent claims 31 and 40, as well as all claims depending therefrom.

Omitted Features of Independent Claim 41

Amended independent claim 41 recites, *inter alia*, “wherein the serving station receives local input data from a local operator via an *input device that is coupled to the serving station.*” (Emphasis added). The Examiner relied upon the Tokunaga reference in view of the Wood reference to reject independent claim 41. *See* Final Office Action, page 12. However, neither the Tokunaga reference nor the Wood reference describes a serving station that receives local input data from a local operator via an input device that is coupled to the serving station.

The amended language of claim 41 parallels rejected claim 14. Here again, the Examiner relied upon the Deaven reference to teach a serving station that receives local input data from a local operator via an input device that is coupled to the serving station. However, as discussed above, in accordance with 35 U.S.C. § 103(c) and M.P.E.P. § 706.02(I)(3), the Deaven reference does not qualify as prior art that may be used in a rejection under 35 U.S.C. § 103(a). Therefore, the Deaven reference may not be used to overcome the deficiencies of the Tokunaga reference and the Wood reference with respect to independent claim 41. Thus, the Tokunaga reference and the Wood reference, taken alone or in hypothetical combination, fail to disclose all elements of independent claim 41. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claim 41, and further requests allowance of independent claim 41 as well as all claims depending therefrom.

Conclusion

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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